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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,379	03/09/2004	Carolyn McNeeley	29939/03039A	1915
4743	7590	01/31/2006	EXAMINER	
MARSHALL, GERSTEIN & BORUN LLP 233 S. WACKER DRIVE, SUITE 6300 SEARS TOWER CHICAGO, IL 60606			PAHNG, JASON Y	
			ART UNIT	PAPER NUMBER
			3725	

DATE MAILED: 01/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/796,379

Applicant(s)

MCNEELEY ET AL.

Examiner

Jason Y. Pahng

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 November 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Drawings

The amendment overcomes the drawing objections made in the last Office action.

Claim Objections

The amendment overcomes the claim objections made in the last Office action.

Specification

The amendment overcomes the specification objections made in the last Office action.

Claim Rejections - 35 USC § 112

The amendment overcomes the claim rejections under 35 U.S.C. 112 made in the last Office action.

Claim Rejections - 35 USC § 102

The amendment overcomes the claim rejections under 35 U.S.C. 102 made in the last Office action.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 10-12, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howlett (US 1,984,216) in view of Feer et al. (US 5,312,054), Heard (US 2,482,180), and Elder (US 6,428,407). Howlett discloses a folding food grater with three sides (12, 11, and 15) connected by two hinges and a latch (Figure 1). The first (12) and third (15) panels comprise a latch mechanism for detachable connection. Howlett does not disclose that the three sides each comprise grating elements. In a closely related art, Feer discloses a folding grater and teaches adding a second grating panel in order to perform a different grating function (22, 38). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to provide Howlett with a two grating panels in order to allow grating in two different sizes, as taught by Feer.

Also in a closely related art, Heard discloses a grater with three sides each comprising grating elements (12, 13, and 14) in order to perform another additional grating function (column 1, lines 46-51). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to provide Howlett (as modified) with three sides each comprising grating elements in order to allow grating in three different sizes, as taught by Heard.

As for the first and third panels being foldable over the second panel so that the one or more outwardly protruding grating elements of the second panel are covered by either the first or third panels and the one or more outwardly protruding grating

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elements of the first and the third panels are facing towards the second panel when the first and third panels are folded over the second panel, in a closely related art pertinent to the problem, Elder discloses hinged three panels with protruding sharp elements (50) facing inwards for convenient compact storage (Figure 1; column 5, lines 21-23).

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to provide Howlett (as modified) with hinged three panels with protruding sharp elements facing inwards for convenient compact storage, as taught by Elder.

Claims 2, 3, 8, 13, 15, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howlett (US 1,984,216) in view of Feer et al. (US 5,312,054), Heard (US 2,482,180), and Elder (US 6,428,407) as applied above, further in view of Kaposi et al. (US 6,135,375).

Claims 2 and 15 call for a truncated triangular pyramid configuration. In a closely related art, Kaposi discloses a food grater with a truncated triangular pyramid configuration in order to provide stable footprint (Figure 1). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to provide Howlett (as modified) with a truncated triangular pyramid configuration in order to provide stable footprint, as taught by Kaposi.

Claims 3 and 16 call for a cap. Kaposi discloses a triangular cap in order to provide a grip at the top (column 1, lines 41-45). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to provide Howlett (as modified) with a cap in order to provide a grip at the top, as taught by Kaposi.

Claim 8 calls for a foot rest. Kaposi discloses a foot rest (24) in order to add friction at the base. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to provide Howlett (as modified) with a foot rest in order to add friction at the base, as taught by Kaposi.

With regard to claim 13, Kaposi discloses that three or four convergent faces form his pyramid configuration (column 1, lines 50-53).

Claims 5-7, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howlett (US 1,984,216) in view of Feer et al. (US 5,312,054), Heard (US 2,482,180), and Elder (US 6,428,407) as applied above, further in view of Himmighofen et al. (US 6,082,645).

With regard to claims 5 and 18, Howlett (as modified) discloses hinges but does not call for living hinges. In a closely related art, Himmighofen discloses a food grater with a living hinge (13) in order to avoid using a multiple moving parts for a hinge. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to provide Howlett (as modified) with living hinges in order to avoid using a multiple moving parts for the hinges, as taught by Himmighofen.

With regard to claims 6, 7, and 18, Himmighofen's hinges are plastic and part of a frame for a grater. As for the metallic grating panel, Feer teaches that graters or grating panels typically are metal.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Howlett (US 1,984,216) in view of Feer et al. (US 5,312,054), Heard (US 2,482,180), Elder (US 6,428,407), and in view of Himmighofen et al. (US 6,082,645) as applied above, further

in view of Applicant's Admitted Prior Art (AAPA). The examiner's statement of Official notice in the last Office action was not traversed by Applicant, and thus the common knowledge is taken to be admitted prior art. See MPEP 2144.03. AAPA discloses that the use of injection molded styrene for the frame is obvious and well known in the art. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to provide Howlett (as modified) with an injection molded styrene for the frame because it is obvious and well known in the art, as taught by AAPA.

Claims 4, 17, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howlett (US 1,984,216) in view of Feer et al. (US 5,312,054), Heard (US 2,482,180), Elder (US 6,428,407), Kaposi et al. (US 6,135,375), and Himmighofen et al. (US 6,082,645) as applied above, further in view of Brousseau et al. (US D491,774).

Claims 4, 17, and 19 call for the cap to be connected by a hinge. In a closely related art, Brousseau discloses a food grater with a cap connected by a hinge in order to pivot the cap from a closed position to an open position (Figure 8). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to provide Howlett (as modified) with a cap connected by a hinge in order to pivot the cap from a closed position to an open position, as taught by Brousseau.

With regard to claim 20, Himmighofen's hinges are plastic and part of a frame for a grater, as discussed in claims 6, 7, and 18. As for the metallic grating panel, Feer teaches that graters or grating panels typically are metal, as discussed in claims 6, 7, and 18.

Response to Arguments

Applicant's arguments filed November 23, 2005 have been fully considered but they are not persuasive.

The claim rejection under 35 U.S.C. 102 has been withdrawn. Therefore, the arguments against the claim rejection under 35 U.S.C. 102 are moot.

With regard to claims 1, 10-12, and 14, Applicant argues that "Howlett does not disclose or suggest the use of more than one grating panel. None of Feer et al., Heard, or Elder, alone or in combination make up for the deficiencies of Howlett" in page 12. This is not true because at least Feer discloses use of more than one grating panel as shown in Figure 1.

With regard to claims 1, 10-12, and 14, Applicant argues that "none of the aforementioned references disclose or suggest a latch mechanism for detachably connecting a first panel to a third panel" in page 13. This is not true because Howlett discloses a latch mechanism which detachably connects first (12) and third (15) panels as shown in Figure 1.

With regard to the argument that Elder is directed to a non-analogous art because it is a multi-grit manual finishing tool. This is not understood because Applicant's claimed invention is also a multi-grit manual finishing tool. Elder is analogous because Elder discloses a grater and a method of making a grater. For example, one definition of "grate" is "to reduce to fragments, shreds, or powder by rubbing against an abrasive surface." In response to applicant's argument that Elder is

nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Elder solves the problem of conveniently compacting for storage by folding inwardly the protruding sharp elements.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

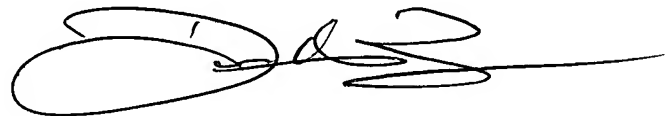
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Y. Pahng whose telephone number is 571 272 4522. The examiner can normally be reached on 9:00 AM - 7:00 PM, Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 571 272 4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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